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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIA AUSTRALIA EXPRESS, LTD.,
represented by SORIAMONT
STEAMSHIP AGENCIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3695

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - x

9/29/88

D E C I S I O N

Involved in this appeal is petitioner's claim for a refund or tax credit of alleged overpayments of income taxes for two fiscal years, 1981 and 1982.

The following are the facts as found accordingly.

Asia Australia Express Ltd., is a foreign corporation engaged in business as common carrier, with port of entry in the Philippines. It is represented by its agent in the Philippines, Soriamont Steamship Agencies, Inc., a domestic corporation, organized and existing under Philippine laws.

For the second quarter of fiscal year ended September 30, 1981, petitioner filed its Corporate Quarterly Income Tax Return on May 29, 1981, declaring therein a taxable net income of P46,833.08 and on the same date, paid the tax due thereon in the amount of P11,708.27 (Exhibits "A-1" and "A-2", Petitioner).

For the Third Quarter of Fiscal Year ended September 30, 1981, petitioner filed its Corporate Quarterly Income Tax Return on July 24, 1981, declaring therein a taxable net income of P143,260.88 and paid the tax due thereon in the amount of P28,432.27 on July 27, 1981 after crediting the amount of P11,708.27 it paid during the 2nd quarter.

For the last quarter of fiscal year ending September 30, 1981, petitioner filed its adjusted final Tax Return on January 14, 1982/and declared therein a net taxable income of P131,918.80 and the amount of P36,171.58 was due thereon as the tax.

After crediting the payments made in the total amount of P40,141.00, petitioner's said return resulted to a refund of the amount of P3,969.42 (Annex C, Petition). On July 5, 1982, petitioner filed an amended final adjusted corporate Annual Income Tax Return, declaring therein a tax due of P1,994.74 and after crediting previous payments, there is a refundable amount of P38,146.26. (Annex C-1).

For the first quarter of Fiscal Year ending September 30, 1982, it filed its Corporate Quarterly Income Tax Return on January 29, 1982 and paid the tax due thereon in the amount of P8,280.23 on January 29, 1982 (Exhibit D-2, Petitioner) after crediting the excess income tax payment stated in its unadjusted quarterly income tax return in the amount of P3,969.42, for the last quarter of fiscal year ending September 30, 1981. (Annex "C", Petition)

For the second quarter of fiscal year ending September 30, 1982, it filed a Corporate Quarter Income Tax Return on April 28, 1982 declaring a taxable net income of P57,816.23 and paid the corresponding tax due thereon in the amount of P14,454.00 (Exhibits "E-1" and "E-2", Petitioner).

For the third quarter of the same fiscal year, it filed a Corporate Quarterly Income Tax Return on August 25, 1982, declaring a net taxable income in the amount of P80,502.00. After crediting the amounts it paid during the first quarter and second quarter in the amounts of P8,280.23 and P14,454.00 respectively, plus the excess income tax payment for the year in the amount of P38,146.26, as stated in its adjusted Final Corporate Quarterly Return, or a total amount of P60,380.49, said return showed a refund of the amount of P40,732.49.

For its final quarterly return for the same fiscal year, it declared a net loss of P224,732.54. Accordingly, petitioner thru letter dated May 9, 1983 filed a claim for refund of the excess payment of income tax paid for the fiscal years ended September 30, 1981, and September 30, 1982, in the total amount of P60,380.49. Without waiting for respondent's action in its claim for refund, petitioner filed the instant petition for review on October 26, 1983.

Respondent maintains that the creditable income tax payments prior to October 26, 1981 have already prescribed when petitioner filed the instant petition for review on October 26, 1983. "Petitioner failed to file a formal claim therefor with the respondent and instead, opted to credit the same for the following fiscal year, thereby assuming the risk of its claim to prescribe as it has so prescribed." Section 292 of the Tax Code so prescribes, "In any case, no suit or proceeding shall be begun after the expiration of two years from date of payment of the tax or penalties regardless of any supervening cause that may arise after payment."

Petitioner avers that prescription does not operate as a bar in the instant case since what is involved here are taxes paid in quarterly installments and withheld at source. "When a tax paid in installments, the prescriptive period of two years provided in Section 306 (now Sec. 292) of the National Internal Revenue Code should be counted from the date of final payment." Since the 1981 final income tax return was filed on its due date, i.e., January 14, 1982, the two year prescriptive period runs from said date and the refund of all the quarterly periods concerned has not prescribed.

This recurring legal question which seemingly so troubled the respondent as when to toll the two-year prescriptive period was squarely faced and ruled upon in the recent case of <u>TMX Sales, Inc. v. Commissioner of Internal Revenue</u> (CTA Case No. 3745, April 29, 1988), where, as here, the ruling plainly applies, <u>*inter alia*</u>, thus -

> The apparent contentious quibble on the computation of the 2-year prescriptive period under Section 292 of the Tax Code had been squarely resolved in earlier decisions of the Supreme Court which lend settling eloquence to the precise issue in the case at bar. Thus ruled, *inter alia*, "When a tax paid in installments, the prescriptive period of two years provided in Section 306 (now Sec. 292) of the Revenue Code should be counted from the date of the final or last installment. x x x This rule proceeds from the theory that, in contemplation of tax laws, there is no payment until the whole or entire tax liability is completely paid. Thus, a payment of a part or portion thereof, cannot operate to start the commencement of the statute of limitations. In this regard the word "tax" or words "the tax" in statutory provisions comparable to Section 306 of our Revenue Code have been uniformly held to refer to the entire tax

> and not a portion thereof (Clark v. U.S. 69 F 2d 748; A.S. Kriedner Co. v. U.S. 30 F Supp. 724; Hills v. U.S. 50 F 2d 302, 55 F 2d 1001) and the vocables "payment of tax" within statutes requiring refund claim, refer to the date when all the tax was paid, not when a portion was paid (Braun v. U.S. 8 F Supp. 869, 863; Collector of Internal Revenue v. Prieto, 2 SCRA 1007; Commissioner of Internal Revenue v. Palanca, 18 SCRA 496).

Let it suffice, petitioner had an overpaid income taxes for the fiscal year ended September 30, 1981 as shown in its final adjustment return, prescribed in Section 86 (now Sec. 69) of the Tax Code, filed on January 14, 1982, which as earlier ruled, deemed the reckoning date to start the running of the two-year period of limitation. It is an admitted fact that the petitioner was clearly entitled to it but for the sprouting impression of the "risk of its claim to prescribe" by having the same credited against future tax liabilities as precipitately broached by the respondent.

Under the circumstances disclosed, petitioner availed of the automatic tax credit scheme in consonance with law expressly providing: "In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year." (Ibid.). We think that this expedient devise which conveniently ensures the collection of taxes due operates not as a waiver of a taxpayer's right to enforce a claim for refund or litigate a suit for recovery of excess payments if so warranted.

Be that as it may, the final adjustment return filed on November 29, 1982 covering the total taxable income for the fiscal year ended September 30, 1982 has shown a refundable amount due in the total sum of P60,880.49 which is not in dispute. Accordingly, petitioner filed an administrative claim and instituted a judicial suit for the refund therefor on May 9, 1983 and October 26, 1983, respectively. This comports with the 2-year statutory proscription tolled from January 14, 1982. And, far be it from a comedy of errors the conjured "risk of prescription" posed, is nowhere here nor there, so to speak.

We therefore find for the petitioner's entitlement to a favorable determination as a matter of fact and law.

WHEREFORE, the refund or tax credit of the amount sought for the taxable years involved is hereby granted. No costs.

SO ORDERED.

Quezon City, Metro Manila, September 29, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals